

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

CIVIL REVISION APPLICATION No 452 of 1999

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the Judgment ?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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GUJARAT LEASE FINANCING LTD.  
VERSUS  
M/S. ABDULLA AKBARALI & CO.

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Appearance:

MR MH JOSHI for the Petitioner  
MR DC DAVE for Respondents

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CORAM : MR JUSTICE S.K. KESHOTE  
Date of Decision: 28/03/2000

C.A.V. JUDGMENT

1. This revision application at the instance of the plaintiff in Summary Civil Suit NO. 401 of 1987 is

directed against the order of the Chamber Judge, City Civil Court, Ahmedabad below Ex. 28 dated 31-12-1998 under which the defendants were granted unconditional leave to defend the suit.

2. The facts of the case are that the plaintiff petitioner filed a suit against the defendants to recover Rs.2,79,93,329/= with 23% per annum interest from the date of the suit till payment of the dues. AS per the case of the plaintiff, the defendants requested the plaintiff - company for getting finance for "Promoter Funding" in M/s. Volvo Steels Ltd. The plaintiff company sanctioned Rs. 200 lacs for promoter funding in terms of the letter dated 20th May, 1994. It disbursed Rs. 200 lacs to the defendants. It is the case of the plaintiff that the cheques which were given by the defendants towards the payment of the loan amount were dishonoured. The defendants committed default in repayment of the finance given to them. On the basis of these facts and evidence, the plaintiff submitted that the defendants have no defence and no triable issues arise in the present proceedings, and therefore, the suit may be decreed.

3. The defendants filed an application for grant of unconditional leave to defend the suit. They have come up with the case that they are residing and doing their business at Mahuva and Bhavnagar. Therefore the court has no jurisdiction to try and decide the suit. The plaintiff advanced loan to three different individuals by different instruments and therefore, the present suit, on the basis of three different instruments, is not maintainable. So plea has been raised for filing of the separate suits. The defendants have averred that they have already pledged the shares of M/s. Volvo Steels Ltd. with the plaintiff company with duly signed transferred form as per the agreement. Thus, they have discharged their obligation. Plea has been taken that the suit documents were entered into with a view to nurse the said M/s. Volvo Steels Ltd. by affecting payment of the suit amount through the defendants. So the defendants cannot be made liable to make the payment.

4. After hearing the learned counsel for the parties, under the impugned order unconditional leave to defend the suit has been granted in favour of the defendants. Hence, this revision application.

5. Shri Joshi, learned counsel for the petitioner contended that the court below has committed serious

material irregularity in exercise of its jurisdiction in granting unconditional leave to defend the suit to the defendants - respondents. Grounds given for granting unconditional leave to defend the suit are wholly perverse. It has next been contended that the values of the shares of M/s. Volvo Steels Ltd., is zero today.

6. On the other hand, learned counsel for the defendants supported the order of the learned trial court.

7. Learned trial court has granted unconditional leave to defend the suit to the defendants after recording the following findings:

(i) the order passed below notice of motion under which the court has granted status-quo with respect to prayers 8 (a), and the defendants were restrained from selling and transferring the shares held in the name of their family members/relations of M/s. Volvo Steels Ltd. In terms of prayer 8(b), the defendant No.1 or any of its partner is restrained from parting with the possession or transferring the properties namely, a residential house called "Sneh" situated in Nutannagar, mahuva, District Bhavnagar, land of Survey No.. 19 admeasuring 0.8094 hectare situated in the sim of village Umaniavadar, Taluka Mahuva, District Bhavnagar, land at Village Vadali, Taluka Mahuva, District Bhavnagar and the share in Chhattaria Dye Stuff Pvt. Ltd. In terms of para 8 (c), the defendant No.1 is restrained from disposing of by way of sale, mortgage, gift or parting with the possession or otherwise transfer any shares to anybody as a partner in Gujarat Pickers Industries situated at Bhavnagar.

(ii) The shares of M/s. Volvo Steel Ltd. are duly pledged with the plaintiff and are in possession of the plaintiff.

(iii) In the proceedings, the defendants have vehemently contended that the Promoter Funding to M/s.Volvo Steel Ltd. is an arrangement worked out by the plaintiff to nurse the said M/s.Volvo Steel Ltd. by affecting payment of the suit amount through the defendants.

8. Learned trial court held that if this defence is turned out to be true and if it is proved by the defendant in the trial, the ultimate liability to pay the suit amount falls on the shoulder of M/s. Volvo Steels Ltd. It is not in dispute that M/s. Volvo Steel

Ltd. is not joined as a party in the suit. Learned counsel for the petitioner though contended that the value of the shares of M/s.Volvo Steel Ltd. is zero but so far as shares of other companies are concerned, it is not the contention. Similarly, the learned counsel for the petitioner has not given out during the course of arguments what is the value of the property house "Sneha", agricultural lands of village Umaniavadar etc. The order of the learned trial court in the facts of this case cannot be said to be perverse. Moreover, the defences raised by the defendant cannot be said to be sham or frivolous. These are the defences which cannot be brushed aside and the suit requires full-fledged trial. In the facts of this case, the order of the learned trial court cannot be termed as perverse. Sufficiently the suit amount has been protected by the court by passing necessary order of injunction. In case the order impugned in this civil revision application is allowed to stand it will not occasion any failure of justice nor it will cause any irreparable injury to the petitioner. The suit is there and only the defendants have been granted unconditional leave to defend the same. In case the petitioner proves his case, the trial court shall pass the decree against the defendants.

9. In the result, this revision application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this court stands vacated. No order as to costs.

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